

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MARCOS CALCANO, *on behalf of himself  
and all other persons similarly situated,*

Plaintiff,

-against-

HOOTERS OF AMERICA LLC,

Defendant.

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 6/7/2022

1:19-cv-9820 (MKV)

ORDER OF DISMISSAL

MARY KAY VYSKOCIL, United States District Judge:

Plaintiff Marcos Calcano filed this action against Defendant Hooters of America LLC asserting claims under the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12181 *et seq.*, the New York State Human Rights Law, N.Y. EXEC. LAW §§ 290 *et seq.*, and the New York City Human Rights Law, N.Y.C. ADMIN. CODE §§ 8-101 *et seq.* [ECF No. 1, 18]. Calcano and other visually impaired plaintiffs filed a number of substantially identical actions against stores and restaurants for failing to carry braille gift cards. *See Calcano v. Swarovski N. Am. Ltd.*, No. 20-1552, 2022 WL 1788305, at \*1 (2d Cir. June 2, 2022); *see also Dominguez v. Pizza Hut of Am., LLC*, No. 19-cv-10175 (MKV), 2020 WL 3639977, at \*4 (S.D.N.Y. July 6, 2020) (dismissing for lack of standing). Defendant filed a motion to dismiss the First Amended Complaint [ECF No. 18] for lack of standing and failure to state a claim [ECF No. 20, 21, 23]. The Court administratively terminated that motion and stayed this case pending the resolution of an appeal arising from the dismissals of five similar cases [ECF No. 27].

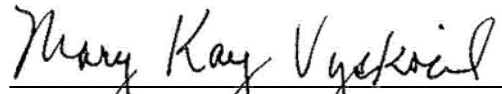
On June 2, 2022, the Second Circuit affirmed those dismissals in *Calcano v. Swarovski N. Am. Ltd.*, 2022 WL 1788305, at \*1. The Second Circuit explained that the “conclusory, boilerplate allegations” in the five “nearly identical complaints” failed to establish standing. *Id.* Calcano’s

pleading in this case, the First Amended Complaint, is substantially identical to the complaints that the Second Circuit held failed to establish standing.

The Court has an independent “obligation . . . to inquire as to subject matter jurisdiction” and to dismiss *sua sponte* where the Court lacks such jurisdiction. *See Da Silva v. Kinsho Int’l Corp.*, 229 F.3d 358, 361–62 (2d Cir. 2000). Accordingly, IT IS HEREBY ORDERED that this case is DISMISSED without prejudice for lack of standing. Calcano may file a second amended complaint within fifteen days. If he does not timely file a second amended complaint, this case will be dismissed with prejudice.

**SO ORDERED**

**Dated: June 7, 2022**  
**New York, New York**

  
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**MARY KAY VYSKOČIL**  
**UNITED STATES DISTRICT JUDGE**